Court No.3

Criminal Revision No. 73 of 2002

Devendra Singh, ……..Revisionist

Versus

State of Uttaranchal and others ……Opposite parties

Hon'ble Irshad Hussain, J.

Heard Sri Sandeep Tandon, learned counsel for the revisionist and Sri Lokendra Dobhal learned counsel for the respondent no. 2.

On a petition under section 125 of the Code of Criminal Procedure, 1973 filed by wife-respondent no. 2, the learned Principal Judge, Family Court, Dehradun passed impugned judgment and order awarding maintenance @ Rs. 2,000/- per month to the wife. It is not in dispute that the parties are living separately and their relations are strained. It is also stated that divorce petition has also been preferred by the respondent no. 2 which is pending disposal. Respondent no. 2 Smt. Shivani Singh categorically stated in her evidence that she was mal-treated and was turned out of the house by her husband. She also alleged that she has apprehension to her life and therefore she is residing separately. The petitioner had disputed the claim. The evidence to this effect was considered and therefore the necessary element for grant of maintenance to the wife was thus found substantiated from her evidence.

The learned counsel for the revisionist-husband has however submitted that the maintenance awarded to the respondent no. 2 is on the higher side, considering the fact that the revisionist is unemployed and is prosecuting his studies for completion of his law degree. Respondent no. 2-wife gave evidence to the fact that the husband is engaged in fruit business and he had been taking orchards on contract basis. The evidence to this effect cannot be easily displaced because not only the husband has to maintain himself in life but also to maintain his wife. It is immaterial that he continues to prosecute his studies. Since he had entered into marital alliance it can safely be accepted that he was having means to maintain himself and his wife besides possessing potential for

the same. This is how that he is earning some money while at the same time also continuing with his pursuit in academic sphere. Considering the facts and the circumstances, it is however difficult to accept that the income of the husband was about 30,000/- per month as stated by the respondent no. 2. Considering the fact that the revisionist is also carrying on with his own studies and at the same time engaged in earning some money, maintenance awarded @ Rs. 2,000/- per month clearly appear to be on the higher side and unreasonable. Taking into account the broad features of the case the maintenance allowance need to be reduced considerably and it will be in the fitness of things if the maintenance allowance is reduced to Rs. 1,000/-. The judgment and order of the learned Principal Judge, Family Court is therefore liable to be modified accordingly.

The revision is partly allowed. Judgment and order dated 1.8.2002 of the Principal Judge, Family Court is modified and the maintenance under section 125 of the Cr. P.C. to the respondent no.2-wife is reduced to Rs. 1000/- per month to be payable w.e.f. the date of the filing of the application i.e. 19.9.2001. The arrears of maintenance allowance after adjusting payment already made shall be paid in three equal instalments. The first instalment shall fall due in the first week of December, 2003 and thereafter the subsequent instalments shall fall due payable on expiry of every three months. The current maintenance allowance shall be paid regularly in the first week of every month. In default of payment of a single instalment, entire arrears shall be recoverable in lump-sum.

(Irshad Hussain, J.)

Dated 31-10-2003
Rawat